

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE
ILLINOIS COMMERCE COMMISSION
SPRINGFIELD, ILLINOIS

CASE NO. 02-0147

NORTH COUNTY COMMUNICATIONS CORP.,

Complainant,

v.

VERIZON NORTH, INC., et al.,

Respondents.

PRE-FILED DIRECT TESTIMONY OF TODD LESSER

February 10, 2003

OFFICIAL FILE

ILL. C. C. DOCKET NO. 02-0147

NCC 1

Witness

Date 11/12/03 CB

1 **PRE-FILED DIRECT TESTIMONY OF TODD LESSER**

2 **Q:** Please state your name and business address.

3 **A:** My name is Todd Lesser. My business address is 3802 Rosecrans
4 Street, No. 485, San Diego, California 92110. My telephone number is (619)
5 364-4750.

6 **Q:** Please describe your qualifications and experience as they relate to this
7 proceeding.

8 **A:** I am the President of North County Communications Corporation
9 (hereinafter "NCC"), and I have held that position since 1995. NCC is a
10 privately held, facilities based competitive local exchange carrier ("CLEC") in
11 San Diego, California. I have substantial experience in telecommunications,
12 including obtaining local interconnection with a number of Bell operating
13 companies including Qwest, SBC, and Verizon.

14 **Q:** Please describe the type of interconnection NCC has obtained to deploy
15 its local telecommunication services.

16 **A:** In deploying local telecommunication services to its customers, NCC
17 has established interconnection with Qwest, SBC and Verizon. As part of my
18 responsibility at NCC, I have knowledge of the interconnection practices and
19 procedures of Qwest, SBC and Verizon.

20 **Q:** Please describe your interconnection experiences with the regional Bell
21 operating companies other than Verizon, to date.

22 **A:** I have been directly involved in establishing competitive local exchange
23 carrier interconnection for NCC in the following locals with the following
24 regional Bell operating companies: Pacific Bell (SBC) in : San Diego, CA,
25 Los Angeles, CA, Sacramento, CA, and San Francisco, CA; Qwest in Portland,
26 OR, Vancouver, WA, Phoenix, AR, Tucson, AR; and Verizon in Charleston,
27 WV and DeKalb, IL.

1 The interconnection with SBC and Qwest at each of these locations has
2 routinely taken approximately 30 days. In my experience, Qwest and SBC have
3 treated my request for interconnection the same way that Qwest and SBC treat
4 requests for special access service, which is analogous to competitive local
5 exchange carrier interconnection. Both SBC and Qwest deploy competitive
6 local exchange carrier interconnection at any "technically feasible" point,
7 including over a "multiplexer" shared by multiple SBC and Qwest customers,
8 including competitive local exchange carriers, long distance companies, and
9 retail end users. A "MULTIPLEXER" or "MUX" is a communications device that
10 multiplexes (combines) several signals for transmission over a single medium.
11 This is the interconnection point between the ILEC and the CLEC.

12 Neither SBC nor Qwest mandate the deployment of any separate
13 "wholesale", "dedicated" or "dedicated" entrance facilities (as Verizon has
14 called them) to provide entrance facility interconnection to competitive local
15 exchange carriers. Rather both SBC and Qwest use existing capacity on any
16 multiplexer, shared or otherwise, to provide interconnection to competitive local
17 exchange carries, such as NCC. If additional capacity is thereafter required, it
18 is built, but only on an as needed basis.

19 **Q:** How has your experience in attempting to interconnect with Verizon
20 compared with your experiences with interconnection SBC and Qwest?

21 **A:** The interconnection process that I have been through with SBC and
22 Qwest, as noted above, have taken approximately 30 days to complete and
23 was relatively simple. In fact, on one occasion, SBC provisioned and installed
24 several T1's on the same day it was ordered. On the other hand, Verizon, from
25 the outset, and in every jurisdiction where NCC has attempted to interconnect,
26 has taken the position that it will not provision competitive local exchange
27 carrier interconnection over shared facilities using existing capacity. Instead of
28 using existing spare capacity, Verizon insists on building new dedicated

1 multiplexer pairs in providing interconnection to competitive local carriers. This
2 not only results in needless expense, but it creates an extremely long delay in
3 getting circuits turned up so that calls can be carried over the local
4 interconnection trunks.

5 NCC has run into this problem with Verizon in a number of jurisdictions.
6 First, in West Virginia, second, in New York, and third, here in Illinois. It is
7 particularly troublesome in Illinois because in Illinois, Verizon is compensated
8 under "rate of return" regulations. Thus, not only is Verizon unreasonably
9 delaying NCC's entry into the market, it is also fraudulently overcharging the
10 ratepayers by unnecessarily increasing its expenses.

11 In my estimation, every time Verizon insists on deploying a dedicated
12 multiplexer pair in establishing a single competitive local exchange carrier
13 interconnection, it incurs an expense of at least \$100,000 and as much as
14 \$1,000,000. Verizon recovers the costs of these build outs in each
15 circumstance abusing rate of return regulation. This expense is completely
16 avoidable if it would simply agree, as other incumbent local exchange carriers
17 do, to deploy the competitive local exchange carrier entrance facility
18 interconnections over shared facilities using existing capacity or any other
19 existing capacity. With respect to delay, as stated above, while it takes SBC
20 and Qwest approximately 30 days to establish interconnection, it takes
21 Verizon, in some instances, over a year to provide interconnection.

22 **Q.** Let's start at the beginning. If NCC wants to interconnect with one of
23 Verizon's operating companies, does it contact the operating company?

24 **A.** No, it does not.

25 **Q.** Then how does NCC start the interconnection process with Verizon?

26 **A.** NCC, like any other CLEC, must contact its account manager at Verizon
27 Services Corporation.

1 Q. What does Verizon Services Corporation do?

2 A. According to testimony before the West Virginia Public Service
3 Commission, Verizon Services Corporation provides various services to and for
4 the Verizon operating companies.

5 Q. But the actual interconnection takes place with the operating company,
6 correct?

7 A. That is correct.

8 Q. Who is NCC's account manager?

9 A. Dianne McKernan. In her own words, she is may account manager,
10 "coast to coast." She was NCC's account manager before, at the time, and
11 after NCC attempted to interconnect with Verizon in Illinois.

12 Q. In what states does Ms. McKernan currently act as NCC's account
13 manager?

14 A. In Illinois, West Virginia, New York, Oregon, and California.

15 Q. Did NCC's experience with Verizon and with Ms. McKernan influence
16 your decision to have NCC file a complaint with the Illinois Commerce
17 Commission and to seek relief?

18 A. Absolutely.

19 Q. So we are clear, what relief are you seeking from the Commission?

20 A. Verizon has a policy of refusing to interconnect with CLECs at facilities
21 which it claims are set aside for its retail customers, despite the existence of
22 sufficient capacity at these locations and despite the technical feasibility of
23 doing so. Instead, Verizon requires that interconnection take place at special
24 wholesale facilities, which results in significant delay while these dedicated
25 facilities are constructed. Verizon uses multiple additional terms to describe
26 these facilities, which are discussed below. NCC submits that this practice
27 violates the letter and the spirit of the Telecommunications Act of 1996 and the

1 FCC regulations enacted in conjunction therewith, as well as § 13-514 of the
2 Illinois Public Utilities Act. NCC is asking that the Commission declare that
3 Verizon has such a policy and that it is an illegal policy, issue a cease-and-
4 desist order barring Verizon from further implementation of this policy in Illinois,
5 and award NCC its costs and attorney's fees incurred in bringing this matter to
6 the Commission's attention, pursuant to § 13-516. NCC has complied with the
7 pre-filing notice requirements contained in § 13-515 ©).

8 **Q.** In order to fully assist the Commission in understanding what NCC went
9 through in dealing with Verizon and this policy, would it be helpful to review
10 your experience leading up to your request to interconnect with Verizon in
11 Illinois?

12 **A.** I believe so. West Virginia is a perfect example. It took Verizon over a
13 year to provide competitive local exchange carrier entrance facility
14 interconnection to NCC in Charleston, West Virginia. Curiously, and only after
15 extensive delays and repeated demands by me and my office, Verizon finally
16 agreed to provide interconnection to NCC in Charleston, West Virginia over a
17 shared retail MUX in July 2001. Verizon insisted that once it had completed
18 "dedicated MUX" it would migrate NCC traffic from the shared retail MUX to the
19 dedicated MUX. Had Verizon agreed to do this at the outset, when I first
20 request it do so, NCC would have been spared the costly delay.

21 **Q:** When was North County approved to provide Local Exchange Service in
22 West Virginia?

23 **A:** The recommend decision of the West Virginia Public Service
24 Commission was filed on July 21, 2000 and became final on August, 10, 2000.

25 **Q:** When did North County request to Opt into the MCI Metro agreement?

26 **A:** On July 5, 2000, David Klein of Klein, Zelman, Rotherel & Dichter, in a
27 letter, informed Verizon that North County wishes to opt into the MCI
28

1 Metro Agreement. See Exhibit "A."

2 **Q:** How long did it take Verizon to respond with the forms to opt into the
3 agreement?

4 **A:** Almost two months after our request and only after David Klein called
5 them multiple times on September 6th 2000, Verizon finally mailed David Klein
6 an adoption letter. See Exhibit "B."

7 **Q:** Did Verizon cause any other delays?

8 **A:** Yes. First, Verizon required that I fill out a customer profile. I did so and
9 David Klein sent a copy of the profile on August 18, 2000. We received no
10 response. I faxed a copy of the profile on September 5, 2000. I received no
11 response. I faxed another copy of the profile on December 20, 2000. Almost
12 one month later and after 150 days from the first time the profile was sent, on
13 January 17, 2001, Dianne McKernan emailed me with concerns over the
14 content of the profile. See Exhibit "C-001."

15 During this entire period of time, North County was prevented from
16 operating as a phone company in West Virginia.

17 **Q:** Did Verizon ever acknowledge receiving all the profiles?

18 **A:** Exhibit "C" are the emails between North County and Verizon. Each
19 page is labeled for convenience. The email from Dianne McKernan of January
20 17, 2001 is at page 1. In that email Ms. McKernan acknowledges receipt of
21 only the first profile sent by David Klein in August, 2000. Exhibit "D" is a
22 response to a request for production of documents propounded by North
23 County Communications in that matter. Verizon states under oath that Ms.
24 McKernan only received the customer profiles dated September 5, 2000,
25 December 20, 2000 and January 21, 2001. Significantly, Verizon omits any
26 reference to receiving the original customer profile sent to it in August 2000.

1 Q: As to Dianne McKernan's statement in her email of January 17, 2001
2 (Exhibit "C-002-003") that Verizon called North County with concerns about the
3 customer profile, did North County or any representatives from North County
4 receive such a phone call?

5 A: No.

6 Q: When did you finally have your first phone contact with Verizon?

7 A: I was able to track down Dianne McKernan on December 20th, 2001

8 Q: Did she start working with you right away?

9 A: No, she delayed me twenty eight days (Jan. 17th 2001) while her
10 department was going through a reorganization. See Exhibit "C-004"

11 Q: On Jan 17, 2001, Dianne McKernan asked for some additional
12 information for the profile. When did you get her the information?

13 A: Four days later on January 21, 2001, I sent her the rest of the
14 information she requested.

15 Q: Did North County ever order interconnection trunks from Verizon?

16 A: On January 17th, 2001, North County faxed an ASR (Access Service
17 Request) to Verizon for two T1s of service. See Exhibit "E"

18 Q: Why did you fax in the ASR's?

19 A: I had been waiting for Verizon for almost six months and I needed to
20 have

21 them processed so I wouldn't lose my telephone prefixes.

22 Q: Did you inform Dianne McKernan about this?

23 A: Yes. I sent her an e-mail telling her that I was only ordering two T1's
24 and I needed the ordered processed. See Exhibit "C-005"

25 Q: Did Verizon process these ASR's?

1 **A:** No, I received an e-mail from Dianne McKernan on Jan. 18th, 2001
2 saying that my orders were being held until they set up a conference call with
3 me. See Exhibit "C-006"

4 **Q:** Did you have the conference call right away?

5 **A:** No, she delayed me another six days before we could talk?

6 **Q:** What did you do while you were waiting?

7 **A:** I asked her again to process my minimal order. See Exhibit "C-007"

8 **Q:** Did Verizon process it?

9 **A:** No.

10 **Q:** What happened during the conference call?

11 **A:** Verizon said they would look into using the existing fiber at the building.
12 They wanted some information from me. They were totally unprepared for the
13 conference call. They couldn't answer any of my questions and had to get
14 back to me.

15 **Q:** Was anyone else representing North County Communications on the
16 call?

17 **A:** Yes, my attorney, David Klein.

18 **Q:** What happened after the conference call?

19 **A:** Verizon asked for my list of prefixes and the CLLI code (a code number
20 that the industry assigns to a specific piece of equipment or location) of the
21 MUX I wanted to interconnect with. I e-mailed it to them on January 25th, 2001
22 See Exhibit "C-008"

23 **Q:** Did Verizon process the ASR's after the conference call?

24 **A:** No.

25 **Q:** What happened next?

26 **A:** They delayed me once again. On January 25th, they scheduled another
27 conference call for January 31st.

28

Q: What happened on this conference call?

A: Dianne McKernan told me that they determined that they, " needed to build an Entrance Facility because you could not use a non-wholesale market entrance."

See Exhibit "C-009, C-010, and C-011"

Q: Is it your understanding that it is Verizon's policy to not use a retail MUX to interconnect with a CLEC?

A. Verizon has used multiple terms and changed their story multiple times.

In January 2001, Dianne McKernan tells me that is it their policy to not interconnect at non-wholesale market entrances. See Exhibit "C-009, C-010, and C-011"

On December 27th of 2001, Diane McKernan used a new term - Shared MUX. She told me that I can't use this type of MUX for interconnection. See Exhibit "C-31"

In Illinois, Diane McKernan used the term Enterprise Facility and retail/enterprise facility. Here she again said there is a policy that says they won't allow interconnection See Exhibit "C-032, C-033, C-034, C-035 and C-036"

Ironically, once litigation has been commenced, before the West Virginia Public Service Commission, and here, before this Commission, Verizon is saying there is no such policy. Exhibit “G.”

Q: Let's go back to the conference call of January 31, 2001. What happened next?

A: On July 1, 2001 Joseph DiMarino e-mailed me a document to fill out with my forecast of how large of a dedicated MUX I wanted.

Q: When did you find out when the new MUX would be installed?

A: On March 14, 2001, Joseph DiMarino forwarded me the schedule of when the new Fiber MUX was going to be installed. See Exhibit "C-12"

Q: Were you happy with the dates?

A: No. I asked them if I could have a sooner date. I asked them if we could place orders for the circuits before the new MUX installation was completed.

They said no to both of my requests. I asked them if they would start writing the orders, which could take a few weeks before the new MUX was installed. The due date would be thirty days from when they sent the orders. See Exhibit "C-013 and C-014"

Q: Verizon claimed in the West Virginia proceedings that the reason they installed the new MUX is because you had given them a huge forecast. Is this accurate?

A: No, this is complete fabrication. Actually, I didn't give them an interconnection trunk forecast until in July, less than two weeks before the fiber MUX install was to be completed. See Exhibit "C-015 and C-016"

Q: What kind of forecast did you fill out for Joseph Damar?

A: I gave him a facilities forecast for all the types of circuits I may order in the future. This included the interconnection trunks.

Q: Describe the forecast?

A: I gave him a huge but realistic forecast assuming Verizon complied with the Telecom Act. Since Verizon was going to put in a new MUX, I didn't want them to ever have the excuse that the MUX was too small.

Q: What happened next?

A: Verizon wanted a, "PRE-ASR" conference call to discuss the orders.

Q: Did you make any special requests?

1 **A:** No, no one showed up on the 25th of July, 2001. They told me it would
2 be another thirty days. See Exhibit "C-022, C-023 and C-24"

3 **Q:** Did Verizon follow the applicable rules when an order is in jeopardy?

4 **A:** No. They tried to verbally tell me that the orders were not going to
5 happen on time. This is not the industry standard. Everything is supposed to
6 be in writing so it can be tracked. In addition, this information is used to show
7 compliance with the Telecom Act. If I delay an order, Verizon makes me
8 document it for them. To this day, I
9 never received a SUP (a substitute date on the order). See Exhibit "C-025 and
10 C-26"

11 **Q:** What did you do when Verizon told you that they couldn't install a single
12 T1 for another month?

13 **A:** I complained. They agreed to install six T1's using the existing
14 fiber MUX (retail) in the building. I complained and they turned up a T1 the
15 same day that it was ordered. They promised to have the rest of the T1's
16 turned up on the existing
17 (retail) fiber, three days from when they were ordered. See Exhibit "C-027"

18 **Q:** What did you think when they told you this?

19 **A:** This proved to me that they were not telling the truth all along. This is
20 something they could have easily done almost twelve months before.

21 I have had Pacific Bell in the past turn up T1's the same day they were
22 ordered. When you have fiber on both ends, it is as simple as a few key
23 strokes on a computer. They didn't even need to dispatch someone if I would
24 do the inside wiring. There was no reason to make me wait almost a year.
25 They could have had me turned up in Aug of 2000 and not had me wait until
26 Aug 2001. See Exhibit "C-027"

27 **Q:** How many T1's were you using for interconnection in West Virginia?

28

1 **A:** Twenty-eight. The equivalent of one DS3.

2 Q: How much capacity did Verizon have on the "retail" facility in the building
3 where you are located.

4 **A:** The equipment can handle three DS3's. Each DS3 is equivalent to
5 twenty-eight T1's.

6 Q: Was there enough capacity for them to use the "retail" MUX instead of
7 building a "dedicated MUX"?

Q A: Yes,

Q: Does Verizon say there was enough capacity?

10 **A:** In Request for Production No. 110 in West Virginia, they stated two
11 DS3's are used and one DS3's are used and one DS3 or twenty-eight T1's are
12 free. See, Exhibit H.

13 Q: Was Verizon telling the truth?

14 **A:** No. Actually, there was even more capacity then they were saying on
15 the fiber MUX. Out of the total capacity of three DS3's, one DS3 is used; one
16 DS3 is partially used and the third DS3 is not being used. There are twenty-
17 eight T1's in each of the three DS3's that make up a fiber MUX. In the DS3 that
18 is partially use, twenty out of the twenty-eight T1's on that DS3 are used. Six of
19 the T1's are used by NCC. Therefore, in reality one DS3 (twenty-eight T1's)
20 plus eight T1's are free for a total of 30 T1's - - not twenty-eight T1's as
21 Verizon would have you believe.

22 Q: If Verizon had allowed you to interconnect at the "retail" MUX, how much
23 space would still be free?

24 **A:** Fourteen T1's out of a total of eighty-four.

25 **Q:** Did Verizon know this before they started the fiber build?

26 **A:** Yes. I sent them an email on January 17, 2001. See Exhibit "C-005"

1 Q. Do you have any other examples of Verizon forcing this unjust policy on
2 NCC?

3 A. Yes, in New York. See, Ex. C-031. In this e-mail, Ms. McKernan advises
4 me, in no uncertain terms, that the location I chose to interconnect is a "...
5 shared mux and cannot be used for wholesale services."

6 Q. Did NCC ever get interconnected in New York?

7 A. No. Verizon has consistently denied, even to this day, the existence of
8 sufficient capacity at the location at which NCC requested interconnection,
9 knowing full well that its representations in this regard are false.

10 Q: I would like you to address the issue of the existence or nonexistence of
11 this "policy" as described by Dianne McKernan in her e-mails. Please recall e-
12 mails Ex. C-033, 034, and 035.

13 A: Yes, these are the e-mails in which I was explicitly advised of the
14 existence of the policy, nationwide.

15 Q. When was the next time you heard from Ms. McKernan regarding this
16 policy?

17 A. Three days later, on September 23, 2002, in an e-mail which is attached
18 as Ex. C-037.

19 Q: Let me show you Exhibit "C-037," an email from Ms. McKernan to you
20 on September 23, 2002, three days after her direct testimony was filed. The
21 third paragraph states, in pertinent part,

22 I am told there is no hard and fast "policy" but a general
23 practice of using dedicated interoffice facilities to
24 interconnect with other carriers (both IXCs and CLECs)
25 This is not a "policy" but a fact. I have been informed that
26 Verizon's technology and equipment deployment decisions
27 for implementing initial interconnection trunking
28 arrangements with a CLEC are made on a case by case
basis.

Have you had an opportunity to read and review that?

1 **A:** Yes.

2 **Q:** Did Ms. McKernan, prior to your receipt of this email (Exhibit "C-037")
3 ever express this sentiment to you in any way, shape or form?

4 **A:** No.

5 **Q:** Did Ms. McKernan ever tell you that Verizon would consider not requiring
6 a dedicated facility for interconnection in West Virginia?

7 **A:** No, not until almost one year after my initial request for interconnection.
8 What's even more remarkable is the fact that when Verizon finally did agree to
9 use a shared facility to interconnect with North County, it took them only **one**
10 **day** to do it!

11 **Q:** Had you been operating under the impression that there was a Verizon
12 policy that prohibited interconnection with CLECs except at dedicated facilities?

13 **A:** Yes.

14 **Q:** What gave you that impression?

15 **A:** I got that impression from Dianne McKernan and Charles Bartholomew,
16 both employees of Verizon. In fact, this was documented in e-mails which I
17 believe are attached to my direct testimony as Exhibit "C-33" and Exhibit "C-34".
18 I was told multiple times, flat out and in no uncertain terms, that Verizon's policy,
19 and that was the term she used, was to interconnect with CLECs **only** at
20 dedicated entrance or "wholesale" facilities. I am astonished that Ms. McKernan
21 would now take the position, on behalf of Verizon, that there is no such policy.
22 It bears pointing out that these two exhibits relate directly to North County's
23 *efforts to gain interconnection in Illinois.*

24
25 **Q:** Did Ms. McKernan ever articulate this policy to you in any telephone
26 conversations?

1 A: Yes. In at least one conversation with Dianne McKernan, she verbally
2 expressed to me Verizon's policy exactly as I have described above.

3 Q: Does a statement of Verizon's policy appear in any other document that
4 you are aware of?

5 A: Yes. Exhibit "C-009" is an e-mail from Ms. McKernan dated July 3, 2001.
6 In the second paragraph of that e-mail, Ms. McKernan states:

7 Yes, we did have a pre ASR call in January. It was
8 on that call we determined you needed to build an
Entrance Facility because you could not use a non-
wholesale market entrance.

9 Q: Let's go back to Exhibit "C-033" for a moment. As you recall, that's the e-
10 mail where Dianne McKernan told you that "... Verizon West policy is the same
11 as the east, the CLEC may not terminate interconnection facilities on a retail
12 facility". At that point in time, how many T1s were you requesting?

13 A: In my e-mail to Ms. McKernan which is attached as Exhibit "C-032" I
14 explained to her that initially we would only need 2 T1s in DeKalb.

15 Q: Well, did you examine that portion of Ms. McKernan's testimony wherein
16 Ms. McKernan claims that the dedicated facility would be required because of
17 the large forecasted requirements for his traffic?

18 A: Yes.

19 Q: Is that a true statement?

20 A: No.

21 Q: Please explain why?

22 A: Well, although Verizon is now taking the position that they examine the
23 requirement of dedicated facility on a case by case basis, even when I made it
24 clear to them that I could get by with as few as 2 to 4 T1s, I was met with the
25 "policy" that because NCC is a CLEC, it may not hook up to a shared facility
26 and must wait until a dedicated facility is built.

1 **A:** Verizon had already expressed its policy (as described in detail above)
2 that it would not interconnect with me on any thing but a dedicated facility. I
3 requested, on numerous occasions, to be turned up immediately on a shared
4 facility. Although Ms. McKernan tried to argue that I was given other options, in
5 reality, I was not. The options that she articulates of leasing a dedicated facility
6 still requires that a dedicated facility be built. Moreover, they would not allow me
7 to lease a facility on a shared end-user MUX. The second "option" was to lease
8 facilities from some other existing wholesale carrier. This was not a viable
9 alternative either. It made no sense that I should have to lease from, and
10 thereon rely upon a competitor to successfully interconnect with Verizon as they
11 are required to do under the Telecommunications Act. The final "alternative"
12 was to co-locate at Verizon's central office. Not only would this require me to
13 pay otherwise unnecessary collocation fees to Verizon, but it would also require
14 me to build a facility at that location that could take a substantial period of time
15 before the build out was completed. Again, my goal was to avoid a delay so I
16 could begin competing with Verizon at the earliest possible date. They obviously
17 did not want this.

18 **Q:** Lets go to the issue of Verizon's motive for the delay.

19
20 **Q.** Does this conclude your direct testimony?

21 **A.** Yes, it does.
22
23
24
25
26
27
28